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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 670

ASSOCIATION FOR THE PRESERVATION OF FREEDOM OF CHOICE, INC. and CHARLES P. MONG,
Petitioners,

versus

JAMES M. POWER, THOMAS MALLEE, DENNIS J. MAHON, and JOHN R. CREWS, constituting the New York City Board of Elections, ABRAHAM D. BEAME, GEORGE J. BALBACH, MICHAEL KOWIT, JAMES J. McFADDEN, J. RAYMOND JONES, ARLEIGH B. WILLIAMSON, EDWARD K. DUDLEY, PAUL T. O'KEEFE, ALICE SACHS, LLOYD E. DICKENS, MICHAEL BLOOM, ROSEMARY FAY, ANGELO SIMONETTI, FLORENCE M. FERGUSON, ANTONIO MENDEZ,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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JAMES M. POWER, THOMAS MALLEE, DENNIS J. MAHON, and JOHN R. CREWS, constituting the New York City Board of Elections, ABRAHAM D. BEAME, GEORGE J. BALBACH, MICHAEL KOWIT, JAMES J. McFADDEN, J. RAYMOND JONES, ARLEIGH B. WILLIAMSON, EDWARD K. DUDLEY, PAUL T. O'KEEFE, ALICE SACHS, LLOYD E. DICKENS, MICHAEL BLOOM, ROSEMARY FAY, ANGELO SIMONETTI, FLORENCE M. FERGUSON, ANTONIO MENDEZ,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

The petitioners herein, by their attorney, the General Counsel to the Association for the Preservation of Freedom of Choice, Inc., pray that a writ of certiorari issue, to review the order of the New York Court of Appeals, entered in the above case on October 5, 1961.

OPINION BELOW

None of the courts below wrote any opinion. The orders of these courts are set forth in the appendix. The order of the Appellate Division is reported at 14 A.D. 2d 596 (No. 4) and the order of the Court of Appeals is reported at N.Y. 2d

JURISDICTION

The order of the New York Court of Appeals was made and entered October 5, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Does racial and religious discrimination in the selection of candidates for public office by public officials and by political committees which have been delegated state power by the state legislature violate the Fourteenth Amendment to the United States Constitution?

2. Are persons other than those of the Negro race protected by the equal protection and due process clauses of the Fourteenth Amendment, United States Constitution?

CONSTITUTIONAL PROVISION INVOLVED.

Fourteenth Amendment, U. S. Constitution: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

On August 9, 1961, petitioners, a non-profit membership corporation, and a registered Democratic voter residing in Manhattan, New York City, filed objections and specifications with respondent members of the New York City Board of Elections against the nominating petitions of respondents Beame, Dudley, and Dickens, candidates for the Democratic nomination for Comptroller of New York City and President of the Borough of Manhattan, respectively, charging that these candidates were designated on account of race, creed, and color, and that accordingly their designating petitions were void. Such objections were made pursuant to Section 145 of the New York Election Law. Upon the dismissal by respondent Board of Elections of the objections, the petitioners, on August 17, 1961, commenced a special proceeding in Supreme Court, New York County, to invalidate the petitions of the named candidates for the September 7, 1961 Democratic primary and to restrain their committees on vacancies, also named as respondents here, who it was alleged had participated in said racial discrimination, from further discrimination. The charged acts of discrimination were alleged to be in violation of the Fourteenth Amendment, as well as the New York State Constitution and Law Against Discrimination. In a second cause of action,

not here involved, review was sought of the order of the New York State Commission Against Discrimination, dismissing petitioner's complaint on the ground that the Commission lacked jurisdiction over public offices. The standing of petitioners to sue is not open to question, since it is customary in New York for a rival candidate to obtain a voter or other person to object rather than to object himself. See In re *Brook*, 169 Misc. 369, 6 N.Y.S. 2d 954 (1938); *Greenberg v. Cohen*, 173 Misc. 372, 17 N.Y. S. 2d 895 (1940), aff'd 258 App. Div. 1039, 17 N.Y.S. 2d 878; In re *Hornidge*, 205 Misc. 362, 129 N.Y.S. 2d 820 (1954), aff'd 283 App. Div. 805, 129 N.Y.S. 2d 498, aff'd 306 N.Y. 876, 119 N.E. 2d 45; *Mahoney v. Lawley*, 301 N.Y. 425, 94 N.E. 2d 587 (1950); Application of *Pabian*, 9 Misc. 2d 995, 998, 167 N.Y.S. 2d 250 (1957), aff'd 4 A.D. 2d 834, 166 N.Y.S. 2d 1023, aff'd 3 N.Y. 2d 888, 166 N.Y.S. 2d 761. (Cf. *Crampton v. Zabriskie*, 101 U.S. 601, 609 (1879), standing of taxpayers to sue.)

In a cryptic order, reprinted in the appendix, which did not even mention the first cause of action, the petition was dismissed without any trial by the Supreme Court. Because of this, the appendix reprints the allegations of the first cause of action. Under the New York practice, the allegations of a pleading which have been so dismissed must be taken as true. *Blanshard v. City of New York*, 262 N.Y. 5, 9, 186 N.E. 29 (1933); *Staten Island Edison Co. v. Maltbie*, 270 App. Div. 55, 58 N.Y.S. 2d 818, 820 (1945). The Appellate Division affirmed this order without opinion, and the Court of Appeals dismissed for want of a substantial constitutional question. In all courts, the federal question was carefully preserved, briefed, and argued.

REASONS FOR GRANTING THE WRIT

1. The New York Courts Below Have Decided Important Federal Questions Diametrically in Conflict With the Guiding Decisions of this Court.

If one principle of law can be said to be fixed in our constitutional firmament, it is that racial discrimination by government officials or persons exercising government power is forbidden. That such a prohibition extends to selection for public employment or office, paid from the public funds of all the taxpayers, is hardly open to doubt. *Slochower v. Board of Higher Ed.*, 350 U.S. 551 (1956); *Wieman v. Updegraff*, 344 U.S. 183 (1952); *United Public Workers v. Mitchell*, 330 U.S. 75, 100 (1947); *Alston v. School Board*, 112 F. 2d 992 (4th Cir. 1940); *Brooks v. Board of Education*, 267 F. 2d 733, 735 (8th Cir., 1959). Several state cases have recognized this, including New York *People v. Crane*, 214 N.Y. 154, 161, 168, 108 N.E. 427 (1915) per Cardozo, C. J.; *Terry v. Civil Service Comm.*, 108 Cal. App. 2d 861, 240 P. 2d 691, 697 (1952); *Morgan v. Civil Service Comm.*, 131 N.J.L. 410, 36 A. 2d 898, 901 (1944); *Opinion of Justices*, 302 Mass. 631, 22 N.E. 2d 49, 58 (1939).

Notwithstanding the fact that the petition herein specifically alleged that such racial and religious discrimination was engaged in by Mayor Robert F. Wagner of New York City and other city officials, and was engaged in by the Democratic County Committee, a body set up and functioning under state law, and which exercised state power, the petition was dismissed without even a hearing or trial on the allegations thereof.

In addition, this Court has been adamant in its adherence to the principle that "no election machinery could be sustained if its purpose or effect" was to deny persons "on account of their race an effective" voice or chance to be considered for office "in the governmental affairs of their county, state, or community." *Terry v. Adams*, 345 U.S. 461, 466 (1953). Moreover, "the constitutional right to be free from racial discrimination . . . is not to be nullified by a state through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election." *Id.*, at p. 466. Here, petitioners specifically alleged that the various Democratic party committees were set up pursuant to state law, performed functions recognized under and constituting an integral part of the electoral process of New York State's election machinery, and had engaged in racial discrimination. Notwithstanding these allegations which must be accepted as true, the New York courts held that such allegations stated no grounds for any relief.

Such holdings palpably fly in the face of this Court's most settled decisions. Far less than what is here present is needed to make a showing of state action. *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961). The mere fact that candidates of other parties can run in a general election does not insulate from review a primary; and the mere fact that other candidates can run in the primary does not insulate from review the pre-primary process which "functioned as a part of the state's electoral machinery." *Terry v. Adams*, supra, at p. 481. Nor does the argument that the question is "political" carry weight

when the state has engaged in racial discrimination. *Gomillion v. Lightfoot*, 364 U.S. 339, 346-7 (1961). It is clear that the failure of the New York courts to give any reason why the instant petition was legally insufficient cannot obscure their utter disregard of settled constitutional principles. Unless this Court is prepared to give free license to state courts to ignore the most settled principles of constitutional law by hiding their reasoning under an obscuring cloak of all-embracing silence, certiorari must be granted.

2. This Case Raises Issues of Vast Public Importance.

The fact that issues of racial discrimination are of public importance can hardly be denied, but the significance of such a claim is magnified many times where the choosing of public officials is involved. Government at all levels was never as important, never touched the lives of ordinary citizens, to the extent it does today. Never has it been of such transcendental importance that the most qualified governmental officials be chosen, without regard to race, creed, or color. Never has it been so necessary that the selection process for public officials be freed from the shackles of racial discrimination.

Ticket-balancing is, of necessity, racial discrimination. If another member of the ticket belongs to the same ethnic group as the aspirant, he is barred, regardless of his qualifications. Likewise, members of small minority groups are barred from any consideration. Surely, the right of every person to be considered for high public office based on his qualifications is as important as his

right to get a hamburger at a convenient restaurant. Cf. *Burton v. Wilmington Parking Authority*, supra.

Only this term this Court has heard our cities clamor for greater representation in legislative halls. Is this increased representation to consist of a larger number of political "hacks" chosen by the city bosses to appeal to ethnic minorities based on name or skin color without regard to fitness for the responsibilities of the offices they will hold? Is this where this Court's protection of Negro voting rights is to lead us — where it has already led in New York and other northern cities — as this case, all too unhappily, showed? Will this Court permit "the differences in cultural traditions, instead of adding flavor and variety to our common citizenry . . . [to] be hardened into hostilities by leave of law," as the squabbling community leaders of each ethnic minority demand that this office, or that office, or some other office, become its exclusive and vested property right in perpetuity, as the Negro community leaders in New York have already done in respect to the office of Borough President of Manhattan? (See enclosed circular attached to appendix.) *Hughes v. Superior Court*, 339 U. S. 464 (1950). Constitutional myopia in the extreme would be needed to consider the issue of racial and religious discrimination in our election process trivial.

Finally, a word should be said to quiet doubts about mootness since the September 7th Democratic primary has already been held and this case will not be decided until the general election is over. It might be noted that two of the candidates complained of here were nominated in the primary and elected. Under New York law, "none

of these respondents . . . has a right to be voted for by civilian electors unless his name is validly on the ballots in question." *King v. Cohen*, 293 N.Y. 435, 439, 57 N.E. 2d 748 (1944). And where the candidate or his agents, backers, or supporters, have engaged in fraud or other misconduct, his designation is void and he cannot be on the ballot due "to his own malfeasance." *Collins v. Heffernan*, 187 Misc. 165 63 N.Y.S. 2d 692, 694 (1946). Accord, Application of *Vukelic*, 200 N.Y.S. 2d 1018, 1020 (1960), and cases cited. Accordingly, where such a candidate has won the election, and protest was timely made, the New York Supreme Court can set aside the primary or general election and order a new election because of the illegality. *Lepori v. Zeissner*, 151 Misc. 423, 272 N.Y.S. 740 (1934). Hence, the New York Supreme Court would provide the same remedy in the event that illegal racial discrimination permeated the result. *Testa v. Katt*, 330 U.S. 386 (1947).

The above analysis is implicit in the holding of the Court of Appeals itself. In Matter of *Manning*, 139 N.Y. 446, 448, 34 N.E. 931 (1893), the Court of Appeals declared: "The practice of this court has been to refuse to entertain appeals when it is plain that nothing can be accomplished by the decision." Conformably with this, in every case where a challenge has been made to a nominating petition before the primary election, but by the time the case reached the Court of Appeals the primary has already been held, and no grounds are set forth to invalidate the election itself, the appeal has been dismissed, not on the merits, but for mootness. *Bednarsh v. Cohen*, 292 N.Y. 578, 54 N.E. 2d 693 (1944); *Savory v. Cohen*, 281 N.Y. 715, 23 N.E. 2d 542 (1939); *Nestler v. Cohen*, 265 N.Y. 576, 193 N.E. 327 (1934). Here, however, the pri-

mary was held on September 7, 1961, but the order of the Court of Appeals, issued on October 5, 1961, was grounded, not on mootness, but on the lack of a "substantial constitutional question." This is a determination on the merits, according to both the practice of the Court of Appeals (Cohen & Karger, Powers of the New York Court of Appeals 252-5 [1952]), and this Court. Compare *Matthews v. Hume*, 269 U.S. 262 (1952) with *Anonymous v. Baker*, 360 U.S. 287 (1959), affirming 4 N.Y. 2d 1034, 177 N.Y.S. 2d 687 (1958). Thus, the Court of Appeals has determined that the intervening election does not prevent effectual relief.

In addition, an order is requested requiring the several committees on vacancies to cease and desist from engaging in unlawful discrimination. This alone prevents any question of mootness from arising. *J. I. Case Co. v. N.L.R.B.*, 321 U.S. 332, 334 (1944).

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

COURT OF APPEALS OF THE STATE OF NEW YORK. October 5, 1961. N.Y. 2d . In the Matter of the Application of ASSOCIATION FOR THE PRESERVATION OF FREEDOM OF CHOICE, INC. et ano., Appellants, vs. JAMES M. POWER et al, Respondents.

Motion to dismiss the appeal granted and the appeal dismissed upon the ground that there is no substantial constitutional question directly involved.

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT, August 31, 1961. 14 A.D. 2d 596.

In the Matter of ASSOCIATION FOR THE PRESERVATION OF FREEDOM OF CHOICE, INC., et al, Appellants, v. JAMES M. POWER et al, Respondents. Order entered August 25, 1961, unanimously affirmed, with $20 costs and disbursements to respondents. Leave to appeal to the Court of Appeals denied. No opinion.

SUPREME COURT OF THE STATE OF NEW YORK, SPECIAL TERM, PART I, NEW YORK COUNTY, Present: Hon. Morris E. Spector, Justice. No. 13570-1961.

In the Matter of the Application of ASSOCIATION FOR THE PRESERVATION OF FREEDOM OF CHOICE, INC., et al, Petitioners, v. JAMES M. POWER et al, Respondents.

Upon the foregoing papers this application to set aside a determination of the N.Y. State Commission Against Discrimination is denied. The Commission's finding of lack of jurisdiction in these elective offices is not unreasonable, arbitrary, or capricious.

Filed: August 25, 1961. M.E.S., J.S.C.

COMPLAINT

The petition of the Association for the Preservation of Freedom of Choice, Inc. (hereinafter called APFC) and Charles P. Mong respectfully shows:

FOR A FIRST CAUSE OF ACTION: PETITIONERS ALLEGE:

1. Petitioner A.P.F.C. is a non-profit District of Columbia membership corporation organized to promote the right to freedom of choice and association and to obtain public recognition for this right, and has as members electors and registered Democratic voters residing in the Borough of Manhattan who are not of the Negro race or of the Jewish faith, and who would be eligible for the Democratic nomination for the office of Borough Presi-

dent of Manhattan, or for the Democratic nomination for Comptroller of New York City, and who might have been designated to run for said offices but for the acts of discrimination hereinafter set forth, and who are eligible to vote in the Democratic primary on September 7, 1961.

2. Petitioner Mong is a registered Democratic elector residing at 175 East 89th St., Borough of Manhattan, New York City, eligible to vote in the Democratic primary on September 7, 1961, to choose the Democratic nominee for the offices of Borough President of Manhattan and Comptroller of New York City, and is not of the Negro race or Jewish faith, and might have been designated to run for said offices but for the acts of discrimination hereinafter set forth.

3. Petitioners bring this proceeding for themselves and all others of the same class who were likewise discriminated against.

4. On information and belief, on or about July 8, 1961, Mayor Robert F. Wagner of New York City announced his support of respondent Abraham D. Beame for the Democratic nomination for Comptroller of New York City and respondent Edward K. Dudley for the Democratic nomination for President of the Borough of Manhattan in the September 7, 1961 Democratic primary election to be held therein and designated them as the persons to be supported by his supporters, and based on said announcement, sundry other supporters of the Mayor for re-election, city officials, and so-called "reform" Democratic clubs, announced their choice of Beame for comptroller and Dudley for borough president, and have urged registered Democratic electors to sign petitions for Beame and Dudley and have obtained said signatures on petitions for Beame and Dudley, and have urged said voters to vote

for Beame and Dudley, all the above acts being motivated by the fact that Beame is of the Jewish faith and Dudley is of the Negro race, and by their desire to "balance" the Wagner ticket by obtaining a Jewish Democratic nominee for comptroller and a Negro Democratic nominee for borough president, and they did thereby commit acts of discrimination against persons of other faiths and races who might have otherwise been considered and chosen for said designations, in violation of the New York Law Against Discrimination, Executive Law, § 290 et seq., the New York State Constitution, Art. I, Sec. 11, and the United States Constitution, 14th Amendment; and they did also commit a fraud in obtaining signatures of registered Democratic voters by failing to inform them of the above illegality and discrimination, as aforesaid.

5. On information and belief, the Executive Committee of the Regular Democratic organization of New York County, popularly called "Tammany Hall", consists of all of the assembly district leaders and co-leaders elected to said posts pursuant to New York State Election Law, § 153, and is established pursuant to Election Law, § 10 and has been, by rule or custom and usage, delegated by the New York Democratic County Committee the function of selecting borough and county-wide candidates who will run as regular organization candidates in the Democratic primary election, and candidates selected by said Executive Committee are by long custom and usage given consents to run on the regular organization line with other regular organization candidates for city-wide and local nominations.

6. On information and belief, the aforesaid borough-wide candidates designated by the Executive Committee are in the majority of cases unopposed in the Democratic

primary election, and when so opposed are almost alway successful, and said designation is usually abided by mos regular Democratic clubs, and the members thereof, in cluding the county committeemen, as a direct result o said designation, obtain signatures for said candidates o primary designating petitions necessary to be on the pr mary ballot, and urge voters to vote for them, and as result of the fact that New York County normally elect Democratic Party candidates, in an overwhelming ma jority of cases said designation by the Executive Com mittee is the equivalent of election to office.

7. On information and belief, the process by which th Executive Committee designates Democratic nominees an integral part of the process of electing public official in New York County, and Borough of Manhattan, and i so designating officials the said Executive Committe members exercise power delegated by New York State.

8. On information and belief, during July, 1961, th Regular Democratic organization of New York County represented by its Executive Committee, did announc their choice of respondent Lloyd E. Dickens as their des ignee for the Democratic nomination for Borough Pres dent of Manhattan, and based on said choice they and thei club members have urged registered Democratic electo to sign petitions for Dickens, and have urged said voter to vote for Dickens, and have obtained said signatures o petitions for Dickens, all of the above acts being motivate by the fact that Dickens is of the Negro race and by thei desire to "balance" the regular organization ticket an obtain a Negro Democratic nominee for Borough Pres dent, to obtain the support of Negro Democratic leader and of Negro voters for said regular organization ticke and they did thereby commit acts of discrimination agains

persons of other races who might otherwise have been considered for and chosen for said designation, in violation of the New York State Law Against Discrimination, Executive Law, § 290 et seq., the New York State Constitution, Art. I, Sec. 11, and the United States Constitution, 14th Amendment, and they did also commit a fraud in obtaining signatures of registered Democratic voters by failing to inform them of the above illegality or discrimination, as aforesaid.

9. On information and belief, respondents Balbach, Kowit, McFadden, Jones, and Williamson constitute the committee to fill vacancies of respondent Beame for comptroller; respondents O'Keefe, Jones, and Sachs constitute the committee to fill vacancies of respondent Dudley for borough president of Manhattan; and respondents Bloom, Fay, Simonetti, Ferguson, and Mendez constitute the committee to fill vacancies of respondent Dickens for borough president of Manhattan, and each of said members of said committees has participated in the aforesaid discrimination.

WHEREFORE, petitioners pray that an order be entered annulling the petitions and designations of respondents Beame, Dudley, and Dickens, and requiring the Board of Elections to do likewise, and requiring respondent members of committees on vacancies to cease and desist from engaging in unlawful discrimination.

Association for the Preservation of Freedom of Choice, Inc.

DIVISION OF ADMINISTRATION

SPECIAL COMMITTEE FOR EQUAL RIGHTS TO PUBLIC OFFICE

1497 Lexington Avenue

New York 28, New York

LE 4-9085

Dear Voter:

Do you believe in discrimination in reverse? Do you believe that any one ethnic or racial group in Manhattan should have a monopoly to any public office? Do you think that any minority group in any political party should be able to dictate the perpetual nominating of one of its members to public office?

Since early this spring, the Association for the Preservation of Freedom of Choice, Inc., has been fighting the concept that any public office should be the private preserve of any one minority in the City of New York. Long before the present primary campaign commenced, on March 13, 1961, a few weeks after the present Borough President of Manhattan was chosen, the A.P.F.C. filed a complaint with the New York State Commission Against Discrimination charging that "Mayor Robert F. Wagner, in fear of the political consequences of choosing someone other than a member of the Negro race as President of the Borough of Manhattan, to replace the prior incumbent, determined at the time of the conviction of Hulan Jack, and thereafter, that he would support only a member of the Negro race for such office," and that the Mayor supported and secured the election of Borough President Dudley for this reason.

More recently, as you will see in the enclosed circular, the A.P.F.C. has commenced a federal court suit to prevent further discrimination in selecting the Borough President. Of course, what the Mayor should not be permitted to do, political leaders in Harlem should not be permitted to do.

The A.P.F.C. has no connection with any other organization or committee in Manhattan. For two years it has been the only corporation in New York State organized to "promote the right to individual freedom of choice." The A.P.F.C. has recently won a major case in the New York Court of Appeals, New York's highest court, giving it the right to promote freedom of choice in New York.

To promote freedom of choice and equal rights in respect to elections to public office, the A.P.F.C. has recently formed a special committee. We ask you to open the page to see how your freedom of choice is being restricted, and what you can do about it.

Very truly yours,

Alfred Avins

For the Committee

P.S. The SEPTEMBER 7th PRIMARY is just around the corner. Help us to get out the vote on September 7th. DON'T LOSE YOUR FREEDOM OF CHOICE.

THE PROBLEM: DISCRIMINATION IN REVERSE:

No Whites Allowed

John Young, an independent candidate from Harlem for the Democratic Borough Presidential nomination, charged the Republican party had turned the clock back "by picking a white female candidate with a marked southern accent." The Republican designee is Doro

Choosing a Borough President

To the Editor of The New York Times:

The thought may be naive, but it would seem that Manhattan's Borough President need not be a Negro.

Some of us still have the notion that the city's Councilmen—our representatives in the matter—should select the man best qualified. Jim Crow has a reverse side.

ERNEST M. SELIGMANN

Brooklyn, Jan. 7, 1961.

backed Lloyd E. Dickens against Mayor Wagner entry, Edward R. Dudley. Mr. Dudley, receiving the apostolic blessing of Rev. Adam Clayton Powell Jr., won in a photo finish.

Messrs. Jack, Brown, Dickens and Dudley are all, of course, Negroes, there being a strict clause in the New York City Charter providing that the Borough President of Manhattan must, whatever else he is, be black. They say the ACLU is preparing a complaint to the Federal Civil Rights Commission on the ground that this clause discriminates unfairly against Jews and Puerto Ricans

Mrs. Borough President

No 'Right' of Succession

There seems to be an effort in some quarters to establish the idea that if and when the office of Borough President of Manhattan becomes vacant it shall be filled with a Negro. Such thinking apparently assumes that since Hulen E. Jack, who has suspended himself while awaiting trial, is a Negro, and the first to hold that office, a sort of claim for all time has been created.

Thus by right of inheritance, by automatic succession, an office once won would always go to the race, color or religion that managed it. This is a principle utterly offensive to democracy; if it had been in effect, to get a hold on it. To argue that an inherited right exists to an office would mean that no Roman Catholic could ever be elected to an office previously held by a Protestant or a Jew, or that no Negro could ever be named to Congress from a seat previously held by a white.

Whenever there is discrimination favoring one race, religion or color, there exists simultaneously and automatically discrimination against some other race, religion or color. Nothing that Mr. Jack has done constitutes a reason why a Negro should not be considered for his or any other office. The color of a man's skin should not be a qualification or disqualification for office. That is the meaning of equal

Lie... crats, ... by a plural... gest margin ever... Mayoralty history. Mr. Wagner has had a ... second term. A series of ... scandals within his administration has come to light. Critics have complained that the Mayor has ... exert leadership. Since ... ization problems ... cated by a Demo... reform factio... many leader a ... nitteman Carl ... state chair... ergast on char... time the Ma... loof from th... result that ... him. Then ... made plain ... actively under consideration for ... the Borough Presidency, he is ... a Negro.

Originally, the Mayor had ... the support of Councilman ... Brown, Louis Okin and Samuel ... Davis for "an outstanding ind... pendent candidacy."

It was understood the Mayor ... favored Robert L. Weaver for ...

Continued on Page 19, Column 6

But the team, in endorsing Mr. Brown, named Mr. Dickens as second choice. Mr. Dickens, a member of the team, is the leader in the Eleventh Assembly District.

Makes No Claim

The Mayor does not support Mr. Dickens. But it was noted with interest that Mr. Wagner made no claim in his statement that he had the votes to put across Justice Dudley.

The 50-year-old Justice, appointed by the Mayor, is a former United States Minister to Liberia. Like all the others ... Borough Presidency, he is a Negro.

... the support of Councilman ... Brown, Louis Okin and Samuel ... Davis for "an outstanding ind... pendent candidacy."

... It was understood the Mayor ... favored Robert L. Weaver for ...

... Tuesday ... victory. ... Manhattan, replacing Hulan ... who had been convicted of viola... conflict of interest laws. In ... election there was general ... agreement among Democrats only ... on the point that the new Borough ... President should be, like Mr. Jack ... a Negro.

... Justice Edward R. Dudley. Both ... are Negroes. ... the anti-De Sapio group of ... atic district leaders with ... Wagner has been ... reported declin... preference

Ordeal by Logic

The Association for the Preservation of Freedom of Choice (Inc.), continues its campaign against rampant New York ideologization in the matter of race relations. The Association seeks to point out the internal inconsistencies and questionable constitutionalism of some of the so-called anti-discrimination laws. In March (see *NR*, April 22), the Association filed a complaint before the State Commission Against Discrimination (SCAD) charging that all white citizens of the Borough of Manhattan had been discriminated against when Mayor Wagner and four city councilmen chose Edward R. Dudley as Borough President to succeed Hulan Jack after having first considered and, for one reason or another, rejected Robert C. Weaver and Earl Brown—both of them, like Dudley and Jack, Negroes.

SCAD solemnly "investigated" the case and after hemming and hawing came up with a glorious evasion: since Dudley had filled an elective post he could not properly be classified as an "employee"—and hence the anti-discrimination clause, invoked by the Association for the Preservation of Freedom of Choice, was inapplicable. And never mind that Dudley had not in fact been elected to the Borough Presidency but selected to fill the job by five men who had looked for their candidate only among the Negro community.

APFC promptly appealed the SCAD decision to the Supreme Court of the State of New York, New York County, and had the rare good luck of pleading before Judge Henry Epstein, a Stalk[illegible]ite of Liberalism who not long ago [illegible]DOING[illegible]amco was

Reg U.S. Pat. Off. VOL. 128—NO. 240— and at additional mailing offices

Latest News

Mayor Robert F. Wagner and four city councilmen were charged with racial discrimination today in the choice of Edward R. Dudley, a Negro, as Manhattan Borough President. They were named in a civil suit filed in Federal Court by the Assn. for the Preservation of Freedom of Choice Inc., and Charles P. Mong, a Manhattan Democrat.

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Charles [illegible] and trial Riss

Mayor Charged With Bias in Naming Negro

Mayor Wagner and four members of the City Council were named as defendants yesterday in a civil suit that charges pro-Negro bias in the selection of Edward R. Dudley as Manhattan Borough President.

The suit was brought in United States District Court by a little-known group called the Association for the Preservation of Freedom of Choice, Inc. It alleges Mr. Wagner and the councilmen, in making the interim selection, restricted the field of candidates to Negroes. Thus non-Negroes were deprived of their rights, according to the suit.

The four councilmen are Earl Brown, who is a Negro, Daniel S. Weiss, and Louis Okin, all Democrats, and Stanley M. Isaacs, R., Lib.

Mayor Named in Bias Suit

A Federal court suit was filed today against Mayor Wagner and four Councilmen charging racial discrimination in the choice of Edward K. Dudley for Manhattan Borough President. The civil suit was filed by the Association for the Prevention of Freedom of Choice, Inc., and P. Mong, a Manhattan Democrat.

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GROUP SUES WAGNER ON CHOICE OF DUDLEY

Equal Rights for Office

A suit has been filed in Federal Court to void the election of Edward R. Dudley as Borough

WHAT YOU CAN DO ABOUT DISCRIMINATION, IN THE SEPTEMBER 7th PRIMARY:

Unquestionably, the best qualified candidate for Borough President of Manhattan, a man who was not selected on a discriminatory basis but because of his qualifications, is Congressman Alfred E. Santangelo. Congressman Santangelo has the following record:

1957 to Date: Congressman, 18th District of Manhattan. Member of the House Appropriations Committee and District of Columbia Subcommittee, supervising the $300 million budget for traffic, schools, police, capital outlay, and other District of Columbia government municipal activities.

1947-1956: State Senator, State of New York. Member of the Building Code Commission, Temporary Commission on Youth and Juvenile Delinquency, Permanent Joint Committee on Labor and Industrial Conditions, and City Affairs Committee.

1945: Assistant District Attorney, New York County.

In announcing his candidacy, Congressman Santangelo said:

"I am not an appeaser. I will not permit any minority group to dictate to the Democratic Party under threat of bolting to the opposition."

The Association for the Preservation of Freedom of Choice, Inc., endorses the above statement. The A.P.F.C. urges you to vote for candidates best qualified regardless of ethnic or racial group; it urges you to vote for CONGRESSMAN ALFRED E. SANTANGELO for Borough President of Manhattan.

ASSOCIATION FOR THE PRESERVATION
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Special Committee for Equal
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